

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| BISMARCK MERCADO, | : | Case No. 1:14-cv-124 |
| | : | |
| Petitioner, | : | Judge Timothy S. Black |
| | : | Magistrate Judge Michael R. Merz |
| vs. | : | |
| | : | |
| WARDEN, CHILLICOTHE | : | |
| CORRECTIONAL INSTITUTION, | : | |
| | : | |
| Respondent. | : | |

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS (Doc. 11)
AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. 15)
OF THE UNITED STATES MAGISTRATE JUDGE**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court, and, on March 5, 2015, submitted a Report and Recommendations (“R&R”). (Doc. 11). Petitioner objected to the R&R. (Doc. 13).

This Court then recommitted the case to the Magistrate Judge for reconsideration in light of the objections. (Doc. 14). Pursuant to such reference, the Magistrate Judge reviewed the objections, and, on May 4, 2015, submitted a Supplemental Report and

Recommendations (“Supplemental R&R”). (Doc. 15). Petitioner objected to the Supplemental R&R. (Doc. 16).¹

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such R&R (Doc. 11) and Supplemental R&R (Doc. 15) should be and are hereby **ADOPTED** in their entirety. Accordingly:

1. Petitioner’s petition is **DISMISSED WITH PREJUDICE**;
2. Because reasonable jurists would not disagree with this conclusion, Petitioner is **DENIED** a certificate of appealability;
3. The Court certifies that an appeal of this Order would be objectively frivolous, and therefore Petitioner will not be permitted to proceed *in forma pauperis*; and
4. This case is **CLOSED** on the docket of this Court.

¹ As an initial matter, the Court notes that Petitioner’s objections (Doc. 16) were not timely filed. When the Supplemental R&R was filed, Petitioner was advised that he had seventeen days to file objections. (See Doc. 15 at 8). This period consists of the fourteen days provided directly by Fed. R. Civ. P. 72 and an additional three days because Petitioner was served by mail. A staff note on the docket shows that Petitioner was served by regular mail on the date the Supplemental R&R was filed, May 4, 2015. Thus Petitioner’s time to file objections expired on May 21, 2015. In any event, Petitioner essentially renews his previous objections, which were fully addressed in the R&R (Doc. 11) and Supplemental R&R (Doc. 13). Petitioner maintains that he *did* timely mail a response to the return of writ and argues that he cannot now file a time-stamped copy of that response because he was never provided with one. As the Magistrate Judge notes, such a response was never docketed, and Petitioner has not provided the Court with any evidence supporting his contention that he timely mailed the response for filing. Further, the Court has thoroughly considered Petitioner’s objections—which, presumably, set forth similar arguments to those Petitioner would have advanced in his response to the return of writ—and finds that, for the reasons set forth in the R&R (Doc. 11) and Supplemental R&R (Doc. 13), Petitioner’s arguments are not well taken.

IT IS SO ORDERED.

Date: 6/23/2015

/s/Timothy S. Black
Timothy S. Black
United States District Judge